

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-5212

September Term, 2000

98cv01232

98cv01233

Filed On: August 17, 2001 [618306]

United States of America,
Appellee

v.

Microsoft Corporation,
Appellant

Consolidated with 00-5213

BEFORE: Ginsburg, Chief Judge; Edwards, Williams, Sentelle, Randolph,
Rogers, and Tatel, Circuit Judges

ORDER

Upon consideration of the motion to stay the mandate, the response thereto, and the reply, it is

ORDERED that the motion be denied. In order to obtain a stay of the mandate pending its petition for certiorari, Microsoft must show that the “petition would present a substantial question and that there is good cause for a stay.” See Fed. R. App. P. 41(d)(2)(A); see also D.C. Cir. Rule 41(a)(2) (movant for stay of mandate must provide “facts showing good cause for the relief sought”). For the reasons stated in the appellees’ response to the motion for stay, it appears that Microsoft has misconstrued our opinion, particularly with respect to what would have been required to justify vacating the district court’s findings of fact and conclusions of law as a remedy for the violation of 28 U.S.C.

§ 455(a). We need not decide, however, whether Microsoft’s objections constitute a “substantial question” likely to lead to Supreme Court review, because Microsoft has failed to demonstrate any substantial harm that would result from the reactivation of proceedings in the district court during the limited pendency of the certiorari petition. See Renegotiation Board v. Bannerkraft Clothing Co., 415 U.S. 1, 24 (1974); Virginia Petroleum Jobbers Ass’n v. Federal Power Commission, 259 F.2d 921, 925 (D.C. Cir. 1958).

The Clerk is directed to issue the mandate seven days from the date of this order. See Fed. R. App. P. 41(b).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: Linda Jones

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Deputy Clerk